



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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FEB 27 2014

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Legend:

Taxpayer A = \*\*\*\*\*  
Church B = \*\*\*\*\*  
Entity C = \*\*\*\*\*  
Religious  
Organization D = \*\*\*\*\*  
Foundation E = \*\*\*\*\*  
State F = \*\*\*\*\*  
Plan X = \*\*\*\*\*

Dear \*\*\*\*\*:

This letter is in response to your request dated September 22, 2010, as supplemented by correspondence dated January 23, 2012, March 5, 2012, July 19, 2012, September 4, 2012, and July 23, 2013, submitted on your behalf by your authorized representative regarding the church plan status of Plan X and Taxpayer A's welfare benefit plan within the meaning of section 414(e) of the Internal Revenue Code (Code).

The following facts and representations have been submitted under penalties of perjury on your behalf:

Taxpayer A, a State F non-profit corporation, operates a residential care center for the elderly and disabled. Taxpayer A's Articles of Incorporation state that Taxpayer A shall be operated as a nonprofit corporation exclusively for charitable, scientific and educational purposes, including to administer and manage benevolent institutions for the elderly, to provide spiritual care to elderly persons and otherwise provide for the general welfare in accordance with the Word of God. Taxpayer A's bylaws require Taxpayer A to maintain an affiliation with Religious Organization D. Taxpayer A is an organization described in Section 501(c)(3) of the Code that is tax exempt under Section 501(a) of the Code.

Under Taxpayer A's Articles of Incorporation, the voting members of Church B constitute the only members of Taxpayer A. The voting members of Church B are persons who have been confirmed in the church. They also elect the governing board of Church B, are involved in hiring the pastor, vote on changes to the constitution, and are involved in any buying and selling of church property.

The Articles of Incorporation require that at least 55% (60% prior to January 29, 2012) of the directors of Taxpayer A must be voting members of Church B. Prior to January 30, 2011, Taxpayer A's Board of Directors were elected by the voting members of Church B. Effective January 30, 2011, the directors of Taxpayer A are elected by the Board of Directors of Entity C.

Entity C is a nonprofit corporation exempt from tax under Section 501(c)(3) of the Code. The Articles of Incorporation of Entity C provide that the purposes of Entity C, in part, are to support Church B and its spiritual and charitable purposes, and to administer, manage, and support the charitable activities of Taxpayer A and Foundation E, affiliates of Church B. The voting members of Church B are the members of Entity C. The directors of Entity C are elected by the voting members of Church B, and at least 55% (60% prior to January 29, 2012) of the directors of Entity C must be voting members of Church B. Entity C coordinates the efforts of Church B, Foundation E and Taxpayer A, in order to provide comprehensive services to meet the spiritual, health, education and welfare needs of the surrounding neighborhood.

Church B owns the property on which Taxpayer A is located, and Taxpayer A and Church B share administrative, parking, and meeting space. The Church B chaplain conducts weekly services for the residents of Taxpayer A. The Articles of Incorporation for both Taxpayer A and Entity C provide that upon dissolution of such corporations, any remaining assets shall be distributed to Church B.

Taxpayer A sponsors Plan X, a 403(b) plan, along with a welfare benefit plan, for the benefit of its employees. Plan X is a defined contribution section 403(b) arrangement that was originally established on August 1, 1998. The welfare benefit plan was established prior to January 1, 1974.

By resolution of its Board of Directors, dated August 28, 2012, Taxpayer A established the Benefits Plan Committee (Committee), whose principal purpose is to administer, maintain and fund Plan X and the welfare benefit plan. The pastor of Church B (who is also a director of Taxpayer A) is a member of the Committee. Under the by-laws of Taxpayer A, the activities of the Committee shall be subject at all times to the direction and control of the Board of Directors of Taxpayer A.

Taxpayer A has not made an election under section 410(d) of the Code with respect to Plan X or the welfare benefit plan.

In accordance with Revenue Procedure 2011-44, a Notice to Employees with reference to Plan X was provided on May 15, 2013. This notice explained to participants of Plan X the consequences of church plan status.

Based on the foregoing, you request a ruling that Plan X and the welfare benefit plan are church plans as defined in section 414(e) of the Code, that Plan X has been a church plan since August 1, 1988, and that the welfare benefit plan has been a church plan since January 1, 1974.

Section 414(e) was added to the Code by section 1015 of ERISA. Section 1017(e) of ERISA provided that section 414(e) of the Code applied as of the date of ERISA's enactment. However, section 414(e) of the Code was subsequently amended by section 407(b) of the Multiemployer Pension Plan Amendments Act of 1980, Pub. Law 96-364, to provide that section 414(e) of the Code was effective as of January 1, 1974.

Section 414(e)(1) of the Code generally defines a church plan as a plan established and maintained for its employees (or their beneficiaries) by a church or a convention or association of churches which is exempt from taxation under section 501 of the Code.

Section 414(e)(2) of the Code provides, in part, that the term "church plan" does not include a plan that is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Code); or if less than substantially all of the individuals included in the plan are individuals described in section 414(e)(1) of the Code or section 414(e)(3)(B) of the Code (or their beneficiaries).

Section 414(e)(3)(A) of the Code provides that a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

Section 414(e)(3)(B) of the Code defines "employee" of a church or a convention or association of churches to include a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry, regardless of the source of his or her compensation, and an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of the Code, and which is controlled by or associated with a church or a convention or association of churches.

Section 414(e)(3)(C) of the Code provides that a church or a convention or association of churches which is exempt from tax under section 501 of the Code shall be deemed the employer of any individual included as an employee under subparagraph (B).

Section 414(e)(3)(D) of the Code provides that an organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if the organization shares common religious bonds and convictions with that church or convention or association of churches.

Section 414(e)(4)(A) of the Code provides that if a plan, intended to be a church plan, fails to meet one or more of the church plan requirements and corrects its failure within the correction period, then that plan shall be deemed to meet the requirements of this subsection for the year in which the correction was made and for all prior years.

Section 414(e)(4)(C)(i) of the Code provides, in pertinent part, that the term "correction period" means the period ending 270 days after the date of mailing by the Secretary of a notice of default with respect to the plan's failure to meet one or more of the church plan requirements.

Revenue Procedure 2011-44, 2011-39 I.R.B. 446, supplements the procedures for requesting a letter ruling under section 414(e) of the Code relating to church plans. The revenue procedure: (1) requires that plan participants and other interested persons receive a notice in connection with a letter ruling request under section 414(e) of the Code for a qualified plan; (2) requires that a copy of the notice be submitted to the Internal Revenue Service (IRS) as part of the ruling request; and (3) provides procedures for the IRS to receive and consider comments relating to the ruling request from interested persons.

In order for an organization that is not itself a church or convention or association of churches to have a qualified church plan, it must establish that its employees are employees or deemed employees of a church or convention or association of churches under section 414(e)(3)(B) of the Code by virtue of the organization's control by or affiliation with a church or convention or association of churches. Employees of any organization maintaining a plan are considered to be church employees if the organization: (1) is exempt from tax under section 501 of the Code; and, (2) is controlled by or associated with a church or convention or association of churches. In addition, in order to be a church plan, the plan must be administered or funded (or both) by an organization described in section 414(e)(3)(A) of the Code. To be described in section 414(e)(3)(A) of the Code, an organization must have as its principal purpose the

administration or funding of the plan and must also be controlled by or associated with a church or convention or association of churches.

In this case, Taxpayer A, a State F non-profit corporation, is an organization described in Section 501(c)(3) of the Code that is exempt under Section 501(a) of the Code. The voting members of Church B are the only members of Taxpayer A. The voting members of Church B have indirect control over the appointment of Taxpayer A's Board of Directors by virtue of their power to appoint the directors of Entity C (at least 55% of whom must be members of Church B), who in turn appoint the directors of Taxpayer A. Taxpayer A is located on property owned by Church B and shares office, administrative, and parking space with Church B. Taxpayer A is administered and managed by Entity C, which is controlled by the voting members of Church B, and whose purpose includes supporting Church B and its spiritual and charitable purposes.

In light of Church B's indirect control over Taxpayer A, and the common bonds and convictions between Taxpayer A and Church B, we conclude that Taxpayer A is associated with a church or a convention or association of churches within the meaning of section 414(e)(3)(D) of the Code, that the employees of Taxpayer A meet the definition of employee under section 414(e)(3)(B) of the Code, and that they are deemed to be employees of a church or a convention or association of churches by virtue of being employees of an organization which is exempt from tax under section 501 of the Code and which is controlled by or associated with a church or a convention or association of churches.

Effective August 28, 2012, Plan X and the welfare benefit plan have been administered by the Committee, whose sole purpose is to administer the plans. The Committee is appointed and controlled by the Board of Directors of Taxpayer A, and includes the pastor of Church B. In light of the control of the Committee by the Board of Directors of Taxpayer A, and the indirect control of the Board by the voting members of Church B through Entity C, and Entity C's relationship to Church B, we conclude that the Committee is an organization described in section 414(e)(3)(A) of the Code.

Also, as provided under section 414(e)(4)(A) of the Code, where a plan fails to meet one or more of the church plan requirements and corrects its failure within the correction period, then that plan shall be deemed to meet the requirements of section 414(e) of the Code for the year in which the correction is made and for all prior years. The Committee was established to administer Plan X and the welfare benefit plan on August 28, 2012, which is within the correction period for Plan X and the welfare benefit plan.

Based on the foregoing facts and representations, we conclude that Plan X and the welfare benefit plan are church plans within the meaning of section 414(e) of the Code, that Plan X has been a church plan within the meaning of section 414(e) of the Code since August 1, 1988, and that the welfare benefit plan has been a church plan within the meaning of section 414(e) of the Code since January 1, 1974.

This letter expresses no opinion as to whether Plan X satisfies the requirements of section 403(b) of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you have any questions regarding this letter, please contact \*\*\*\*\*, ID Number \*\*\*\*\*, at \*\*\*\*\*. Please refer all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling  
Notice 437

cc: \*\*\*\*\*  
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